

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RAYMOND BOSOMTWI MIDLEY
21435 Chirping Sparrow Rd
Diamond Bar, CA 91765

Registered Nurse License No. 675402

Respondent.

Case No. 2011-379

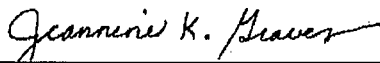
OAH No. 2010121022

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 22, 2011.

IT IS SO ORDERED this 23rd day of August, 2011.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RAYMOND BOSOMTWI MIDLEY
18160 Wellington Lane
Rowland Heights, CA 91748
Registered Nurse License No. 675402,

Respondent.

Case No.: 2011-379

OAH No.: 2010121022

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on June 9, 2011.

Rene Judkiewicz, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and was represented by Courtney E. Pilchman, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Louise R. Bailey, Complainant herein, brought the Accusation in her official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

2. On March 9, 2006, the Board issued Registered Nurse License Number 675402 to Raymond Bosomtwi Midley, Respondent herein. The Registered Nurse License is in full force and effect and will expire on October 31, 2011, unless renewed.

Criminal Conviction

3. On April 28, 2007, Respondent was arrested following a report that Respondent forced then 19-year old M.T. to have sexual intercourse. Respondent has known M.T. since she was 10 years old, and previously engaged in sexual conduct against M.T.'s will multiple times, starting in August 2005, when M.T. was 17 years old, in September and December 2005, and in February 2006. In August 2005 Respondent was 38 years of age. The age disparity between Respondent, a fully mature adult, and M.T. a then teenager is 21 years.

4. Subsequent to his arrest, based on his conduct set forth in Finding 3, Respondent was subjected to criminal proceedings. Thereafter, on February 18, 2009, in *People v. Midley* (Super. Ct. San Bernardino County, 2009, No. FWV802252), Respondent pled guilty to and was convicted of unlawful sexual intercourse with a minor more than three years younger, a violation of Penal Code section 261.5, subdivision (c).

5. Respondent's conduct set forth in Finding 3 evidences to a substantial degree the present unfitness of a registered nurse to practice in a manner consistent with the public, health, safety or welfare. Accordingly, the crime set forth in Finding 4 is substantially related to the qualification, functions and duties of a registered nurse.¹

Aggravation

6. Respondent committed the acts set forth in Finding 3 while married and the father of two children, one a new-born. Accordingly, he breached the trust of his family.

Rehabilitation

7. As a result of the conviction Respondent was placed on conditional and revocable release (probation) for two years; was monitored for three months in lieu of jail time; was ordered to attend counseling at the Glen Helen Rehabilitation Center; ordered to stay away from the victim, M.T.; and fined. Respondent did comply with probation and complete same. He has suffered no other conviction.

8. Respondent is presently employed under his license as a RN at Whittier Presbyterian Hospital. He has been so employed for five years. Over that time he has received good evaluations for his work performance and a number of commendations such as "... excellent service to our (The Hospital's) customers!"

9. A number of persons familiar with Respondent including the Pastor of his Church proffered character letters expression opinions as to Respondent's present character traits of a caring nature and fealty to friends and family.

¹ California Code of Regulations, title 16, section 1444, subdivision (c).

10. The persons referenced in Finding 9 indicated knowledge of Respondent's conviction and sentence. However, none, including his Pastor, indicated any awareness as to the facts and circumstances of the crime set forth in Finding 3 including the predatory nature of Respondent's conduct. Accordingly, none of the persons are qualified to render an opinion as to Respondent's present character and the character letters, therefore, lack credibility as to Respondent's present character.

11. There was no evidence from the Glen Haven program attesting to any success of any court-ordered counseling. There was no prognosis as to Respondent from Glen Haven.

12. There was no post-conviction mental status examination of Respondent by a qualified professional, given the nature of the crime set forth in Finding 4, as to the likelihood of similar acts and as to Respondent's suitability to be a registered nurse.

13. There is no evidence of significant or conscientious involvement in community or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. There is no credible evidence of new and different social relationships from those which existed at the times of the crime.

14. There was no evidence of a change in attitude from that which existed at the time of the conviction set forth in Finding 4. Respondent is not remorseful. He is not contrite. He lacks awareness of the harm he caused to his teenage victim.

Costs

18. The Board incurred costs, including attorney fees, in the total sum of \$3,697.50, in connection with the investigation and prosecution of this action. The costs are deemed just and reasonable.

LEGAL CONCLUSIONS

Applicable Law

1. Business and Professions Code (Code) section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

2. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- - -

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

3. Code section 125.3, subdivision (a) provides in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceeding may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Violations

4. Cause exists to discipline Respondent's license pursuant to Code sections 2750 and 2761, subdivision (f), as combined with California Code of Regulations, title 16, section 1444, for conviction of a substantially related crimes, as set forth in Findings 3,4 and 5.

Costs

5. Cause exists for an order of costs in the amount of \$3,697.50 pursuant to Code section 125.3 by reason of Finding 15.

Disposition

6. California Code of Regulations, title 16, section 1444.5 states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 *et seq.*), the Board shall consider the disciplinary guidelines entitled "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) (Guidelines) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

7. California Code of Regulations, title 16, section 1445, subdivision (b) states:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

8. Using the same sequential order above:

- (1) Unlawful sex with a minor is a severe crime *per se* and was compounded by the predatory nature of the acts.
- (2) The conviction is forth in Finding 4.
- (3) The crime is recent.
- (4) Respondent has completed probation.
- (5) The conviction has not been expunged.
- (6) Notwithstanding Findings 7 and 8 there is an absence of clear and convincing rehabilitation as is demonstrated by Findings 10 through 14.

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Licensing Consideration

9. The Board's Guidelines referenced in Legal Conclusion 6 were reviewed and considered by the Administrative Law Judge to determine the appropriate level of discipline warranted. Additionally, the objective of application proceeding is to protect the public,² the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board. The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to Board licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

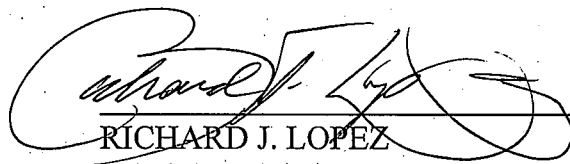
10. In light of Legal Conclusions 4 and 8 the Guidelines recommended penalty of revocation for the crime set forth in Finding 4 is appropriate and in the public interest. There are no mitigating or other factors that warrant deviation from the Guidelines.

ORDER

1. Registered Nurse License Number RN 675402 previously issued to Raymond Bosomtwi Midley, is revoked.

2. Respondent shall pay to the Board at its Sacramento address the sum of \$3,697.50 as costs within sixty (60) days of the effective date of this Decision.

Dated: July 1, 2011


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:ref

² *Camacho v. Youde* (1975) 98 Cal. App 3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal. App. 3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal. App. 4th 810, 816.

Exhibit A

Accusation Case No. 2011-379

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7

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2011-379

11 **RAYMOND BOSOMTWI MIDLEY**
12 **18160 Wellington Lane**
13 **Rowland Heights, CA 91748**
Registered Nurse License No. 675402

A C C U S A T I O N

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board),
20 Department of Consumer Affairs.

21 2. On or about March 9, 2006, the Board issued Registered Nurse License Number
22 675402 to Raymond Bosomtwi Midley (Respondent). The Registered Nurse License was in full
23 force and effect at all times relevant to the charges brought herein, and will expire on October 31,
24 2011, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.
28

STATUTORY AND REGULATORY PROVISIONS

4. Section 118, subdivision (b) of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 of the Code states, in pertinent part:

“The board may take disciplinary action against a . . . licensed nurse . . . for any of the following:

....

“(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.”

8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

9. California Code of Regulations, title 16, section 1444, states, in pertinent part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct”

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3. Taking such other and further action as deemed necessary and proper.

DATED: _____

10/25/10

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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